IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.18852 of 2008
and MP No.1 of 2008

R.Kamaraj
Assistant Director,
Khadi and Village Industries Board, Karur,
Residing at C-6 Shenbagaraman Road,
Seshasayee Nagar, K.K.Nagar,
Trichy 620 021. ... Petitioner

Vs.

1 State of Tamil Nadu
Rep. By its Secretary to Government
(Handlooms, Handicrafts and Textiles and
Khadi (F.1) Department)
Fort St. George, Chennai 600 009.

2 Chief Executive Officer,
Tamil Nadu Khadi and Village,
Industries Board,
Kurulagam, Chennai 600 108.

3 The Regional Deputy Director,
Khadi and Village Industries,
Tiruppur. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first Respondent passed in G.O.D.No.48, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 15.06.2007, confirming the order of the first Respondent passed in G.O. (D) No.104, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 31.08.2005 and to quash the same.

For Petitioner : Mr.S.Baskaran

For 1st Respondent: Mr.Jaya Prakash Narayanan
Special Govt. Pleader

For RR 2 & 3 : Mr.S.K.Bose
Standing Counsel

O R D E R

This Writ Petition has been filed seeking for a Writ of Certiorari, calling for the records of the first Respondent passed in G.O.D.No.48, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 15.06.2007, confirming the order of the first Respondent passed in G.O. (D) No.104, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 31.08.2005, with a prayer to quash the same.

2. When the petitioner was working as an Assistant Director, Khadi and Village Industries at Erode from 19.5.1995 to 07.03.1996, during the festivals seasons such as New Year, Christmas and Pongal, they arranged for the sale of shop soiled cotton, woolen and polyester materials by taking them to various depots such as Kavundhapadi, Gobichettipalayam and Sathiyamangalam and near by areas by Tempo Van. The total sales made during the relevant period was for Rs.6,41,278.75. likewise the petitioner had placed an order for purchasing 500 pairs of shoes from Sithodu Leather Goods Industries Workers Co-operative Society on 01.09.1995 to the value of Rs.1,69,750/- and the said amount was paid on 25.01.1996 and on 30.05.1996. By his successor, the petitioner was relieved from the said post on 07.03.1996 and also the petitioner had permitted some Travelling Allowance amount in advance to the staff working under him. The petitioner also purchased spare parts for the Chakras.

3. A charge memo dated 21.12.1998 was issued against the petitioner wherein certain charges were framed against the petitioner. The first charge relates to using of the sum of Rs.6,430/- towards expenses incurred for Advertisement and Tempo charges etc. for the outstation sale and second charge pertains to the purchasing of 500 pair of shoes for Rs.1,69,750/-, the third charge was granting of travelling allowance advance to the staff from April 1995 to March 1996 to the extent of Rs.1,08,350/-, the fourth charge is for purchasing spare parts

during the year 1995-1996 for Spinning Centre to the extent of Rs.1,50,936/-, the fifth charge is for having spent a sum of Rs.37,073.75 for repairs to the office jeep and the sixth charge is that by doing above said acts, he has not done the duty properly and instrumentally caused loss to the Board.

4. Pursuant to the charges a detailed enquiry was conducted. The petitioner was given an opportunity to participate in the enquiry, witnesses were also examined. Ultimately, on 11.04.2002, the Enquiry Officer filed his report whereby, the Enquiry Officer has found all the six charges proved. Thereafter the Disciplinary Authority passed an order of punishment in G.O.(D) No.104, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 31.08.2005, whereby the Disciplinary Authority inflicted the punishment of stoppage of increment for three years with cumulative effect on the petitioner.

5. Thereafter, the petitioner, as against the said order of punishment, has filed an Appeal on 25.12.2005 to the first respondent and the first respondent being the Appellate Authority has also, after considering the Appeal of the petitioner, rejected the said Appeal in G.O.D.No.48, Handlooms, Handicrafts and Textiles and Khadi (F1) Department dated 15.06.2007. The petitioner challenging the said orders of the Disciplinary Authority as well as the Appellate Authority has come out with the present Writ Petition for the above said prayer.

6. Heard both sides. The learned counsel appearing for the petitioner has raised an issue that as per of the Tamil Nadu Khadi and Village Industries Board Service Regulations five types of minor punishments are provided wherein under Regulation 28 (iii), withholding of increment or promotion is also considered as one of the minor punishment. For imposing such punishments the Authority under Regulation 29, is only the Chief Executive Officer of 2nd Respondent Board and only in respect of the major punishment, the Disciplinary Authority shall be the Commissioner and Secretary to Government in the Administrative Department viz., the first respondent. Herein the case, the charge memo which ultimately ended in the stoppage of increment for three years with cumulative effects is certainly a punishment within Regulation 28 (iii) and therefore, the same ought to have inflicted only by the Disciplinary Authority viz. The Chief Executive Officer of the Board and not by the first respondent who is the Appellate Authority.

7. Thereafter, the petitioner preferred an Appeal before the Appellate Authority viz., the first respondent who had dismissed the Appeal on 15.06.2007, confirming the order of Disciplinary Authority dated 31.08.2005. The learned Counsel for the petitioner would submit that both the Disciplinary Authority and Appellate Authority are one and the same and therefore on this ground the impugned order is liable to be interfered with for want of jurisdiction. The learned counsel for the petitioner further would contend that for all the six charges framed against the petitioner, a detailed explanation was given and in fact, there was no loss to the Board as these expenses were made to enhance the sale of the Khadi Board and that to, within the powers conferred on an Assistant Director and during the relevant time, there was no violation or dereliction of duties on the part of the petitioner. Even though, the witnesses examined by the enquiry officer had also stated that there is no loss to the Board and whatever sale has been made, the amount has been credited and the travelling allowance advanced to the employees was made only on the request of the employees alone and there was no independent decision for dealing funds, the enquiry officer without taking into account any of these deposition of the witnesses, ultimately found, all the charges against the petitioner, were proved.

8. The learned counsel for the petitioner would further contend that when these flaws were brought to the notice of the Appellate Authority, the Appellate Authority has also not considered the same and simply confirmed the order passed by the same Authority, viz. the Disciplinary Authority.

9. It is also the case of the petitioner that during the pendency of the Appeal the third respondent had issued the recovery proceedings on 08.01.2007, directing the petitioner to pay a sum of Rs.4,72,539.95. There is absolutely no basis for passing this order, in fact, no loss whatsoever is caused to the respondent Board and before passing this recovery order, no notice was given to the petitioner and there is no working sheet to explain how these figures were arrived at. The third respondent has simply taken the amount mentioned in the charge memo and ultimately, passed the order for recovery. Since the said order dated 08.01.2007, was passed by the 3rd respondent during the pendency of the appeal, the petitioner did not immediately challenge the same. Thereafter the Appeal also was dismissed. Therefore the petitioner has come out with the present Writ Petition challenging the order of punishment by the

Disciplinary Authority as well as the Appellate Authority and reserved his right to challenge the said recovery order dated 08.01.2007, separately, if need be.

10. Per Contra, the learned counsel for the respondent Board would contend that no doubt under Regulation 28, two types of punishment are provided, one is the minor punishment and another is the major punishment and two different Disciplinary Authorities have been mentioned in Regulation 29. Accordingly, the learned counsel for the respondent would submit that the Executive Officer shall be the Disciplinary Authority for the penalties specified in item Nos. (i) and (iii) relating to withholding of increment and for (v) and (ix) of Regulation 28, and any of the officers in Group A or Group B shall be the Chief Executive Officer. Like that with regard to the penalties to be imposed as specified in Item Nos.(i) and (iii) so far it relates withholding of promotion and items (iv), (vi), (viii) of Regulation 28, the Authority shall be the Commissioner and Secretary to Government in the Administrative Department concerned. Herein the case on hand, the punishment was inflicted by the Commissioner and Secretary to the Government who is the higher authority than the Executive Officer of the Board. Therefore the first respondent has got every power to pass orders by exercising the role of Chief Executive Officer. If an inferior or lower authority exercises the power of the Disciplinary Authority, then only the same can be treated as action without jurisdiction. Here, in the instant case, only higher Authority has exercised the power and there is no wrong on his part to pass that order. As against the said order when the Appeal was filed by the petitioner, naturally the Secretary to Government, the Appellate Authority, has entertained the same and passed the orders on merits by rejecting the same. Therefore, the learned counsel for the respondents would contend that there is no infirmity on the part of jurisdiction and the powers exercised by the first respondent which was in consonance with the Regulations of the Board and the same cannot be found fault with.

11. The learned counsel for the respondents further contended that all the six charges were enquired by the Enquiry Officer in detail manner and after analysing the explanation given by the petitioner and the deposition of the witnesses, finding was given that all the charges were proved. There is no procedural irregularity in conducting the enquiry and admittedly since the petitioner has violated the procedure contemplated under Regulation in dealing with financial matters either for buying/selling or travelling advance to the employees and also spending money for repairing and purchasing of spare parts

certainly the petitioner has violated the norms. Therefore all the charges have been found proved. Therefore the punishment of stoppage of increment for three years with cumulative effect was inflicted, which has been confirmed in the Appeal also and therefore both orders impugned herein cannot be interfered with.

12. This Court, has taken into consideration the rival submissions made on either side counsel and also the materials placed before this Court for perusal. As has been pointed out by the learned counsel for the respondents there is no procedural irregularity in conducting the enquiry for the charges framed against the petitioner. When this Court have a look at the detailed report of the Enquiry Officer, it finds that the Enquiry Officer has conducted the enquiry in respect of each of the chargers against the petitioner wherein reasons were given cogently by taking into account all the materials available before him including the deposition/evidence. Therefore, this Court, finds that the Enquiry Officer report with regard to the finding against the petitioner can be accepted. Since it is a Departmental Proceedings alone it is a settled proposition that the Departmental proceedings can be concluded on the basis of preponderance of probabilities. There is no requirement to prove each of the charge by the employer beyond a reasonable doubt as it is required for a prosecution in a criminal case. Therefore, in that view of the matter this Court, has no hesitation to hold that the report of the enquiry officer is not suffered with any infirmity.

13. In so far as it relates to the proportionality of the punishment inflicted on the petitioner is concerned for the said proven charges which were six in a numbers, stoppage of increment for three years with cumulative effect have been inflicted. Therefore, this Court, is of the view that the said punishment is neither harsh nor in higher side.

14. In respect of the jurisdiction point raised by the learned Counsel for the petitioner, this Court finds that the Disciplinary Authority is the Chief Executive Officer of the Board and in this case the Commissioner and Secretary to Government has exercised the power who is the higher authority and absolutely there is no infirmity in such exercising of power by a higher authority. Therefore, the impugned order does not suffer for want of jurisdiction or authority. Since the very order of punishment was passed by the first respondent the Appeal filed by the petitioner was rightly entertained by the same authority and the appeal entertained can be treated as a review. Therefore, in respect of both orders which are impugned

herein this Court finds no jurisdictional error and therefore that objections raised on behalf of the petitioner is liable to be rejected, accordingly it is rejected.

15. However, in so far as it relates to the order of recovery passed by the 3rd respondent in his order dated 08.01.2007 is concerned, the said order merely shows that under the five headings based on the five charges the same figure/amount as has been mentioned in the charge memo have been put in as if the said amount is a loss to the respondent Board and the petitioner would be the reason for such loss and therefore it proceeds to the recovery from the petitioner. For instance in respect of charge Nos. 1 and 2 related to purchasing of 500 pair of shoes for a sum of Rs.1,69,750/- and thereby it causes loss to the Board. However, the fact remains that the said amount has been fully paid and even this has been found at the Enquiry Officer's findings. The charge actually framed against the petitioner was that he had purchased the shoes to the said value, without any authority, and like that all other charges have been proceeded by the Board. It might have been proved that the petitioner have violated the norms of the respondent Board, however there is no proof to show that by the action of the petitioner the respondent Board sustained loss as has been mentioned in the order dated 08.01.2007.

16. Moreover, before passing this recovery order dated 08.01.2007 the 3rd respondent did not issue any show cause notice to the petitioner, there was no working sheet to the said order as to how the figure has been arrived at as a loss sustained by the Board. Absence of these procedural formalities before proceeding the employee/officer concerned, certainly enhanced the merits of the case of the petitioner which requires interference of this Court in the said order of the 3rd respondent dated 08.01.2007. Therefore this Court is of the view that the said order dated 08.01.2007 passed by the 3rd respondent in Na.Ka.No.882/06/G1 is not a sustainable one. Since the petitioner has not challenged the same in the present Writ Petition as the petitioner is challenging only the order of the punishment as well as the Appellate Authority order, this Court feels that this order dated 08.01.2007 shall not be given effect to and the issue can be remanded back to the respondents for reconsideration in the manner known to law.

17. In the result, this Writ Petition is disposed with the following terms:-

1. The impugned orders in G.O.D.No.48 dated 15.06.2007 and G.O.(D) No.104, dated 31.08.2005 passed by the first

respondent inflicting the punishment on the petitioner are sustainable.

2. The order of the recovery passed by the 3rd respondent in his proceedings in Na.Ka.No.882/06/G1 dated 08.01.2007 is not sustainable and the same is set-aside, the matter relating to the recovery of money is remanded back to the concerned authority for reconsideration.

In the result, the Writ Petition is dismissed with terms indicated above. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1 The Secretary to Government
Government of Tamil Nadu
(Handlooms, Handicrafts and Textiles and Khadi (F.1) Department)
Fort St. George, Chennai 600 009.

2 Chief Executive Officer,
Tamil Nadu Khadi and Village,
Industries Board,
Kurulagam, Chennai 600 108.

3 The Regional Deputy Director,
Khadi and Village Industries,
Tiruppur.

+1cc to Mr.S.K.Bose, Advocate Sr.66453
+1cc to Mr.S.Baskaran, Advocate Sr.65720

W.P. No.18852 of 2008

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srg 19/01/2017